



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

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FILE: [REDACTED] Office: California Service Center

Date: JAN 29 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT;

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was present in the United States without a lawful admission or parole in 1985. An Order to Show Cause was served on him on September 19, 1996. On February 19, 1997, an immigration judge ordered him deported *in absentia*. On April 5, 1997, a Warrant of Deportation was issued and he was ordered to surrender for removal. On May 21, 1997, the court granted his motion to reopen and he was again ordered deported *in absentia* on November 24, 1998. He was eventually taken into custody and removed from the United States on February 23, 1999. Therefore, he is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant married a native and citizen of Mexico on December 12, 1990 in Los Angeles, and his wife became a naturalized U.S. citizen on January 22, 1999. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, counsel discusses the hardship that would be imposed upon the applicant's spouse and five children, and addresses the learning problems of his stepson, Rolando. Counsel states that the applicant has now remained in Mexico since his removal as shown by the supporting documents. Counsel also discusses the criteria used in determining extreme hardship as used in former suspension of deportation cases.

8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

8 C.F.R. § 103.5(a)(4) provides that a motion which does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the Associate Commissioner in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of August 2, 2002, dismissing the appeal is affirmed.